IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 1507 of 2001()

OPMV.1980/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM .

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APPELLANT: PETITIONERS
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1. **SEENA, W/O. BENNY, NADUVILAVEETTIL HOUSE, THEVARA, COCHIN 13.**

2. **SIBIN BENNY, S/O. BENNY (MINOR), NADUVELAVEETTIL HOUSE, THEVARA COCHIN 13.**

3. **BENZY BENNY, D/O. BENNY (MINOR), NADUVELAVEETTIL HOUSE, THEVARA, COCHIN 13.**

4. **N.K.ALLASH, AGED 69, S/O. KAKKI, NADUVELAVEETTIL HOUSE, THEVARA, COCHIN 13.**

5. **CLARA, AGED 65, W/O. ALLASH,NADUVELAVEETTIL HOUSE, THEVARA, COCHIN 13.**

(APPELLANTS 2 AND 3 ARE MINORS REP.BY THEIR NEXT FRIEND AND MOTHER SEENA)

BY ADV. SRI.T.K.KOSHY
SRI.K.P.PAULOSE

M.F.A. NO.1507/2001

RESPONDENTS: RESPONDENTS
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1. THE MANAGER, UNITED INDIA INSURANCE CO.LTD., CITY BRANCH OFFICE, NO.10/1109, IST FLOOR, OPP.TVS. N.H.ROAD, KALOOR, COCHIN 682 017.

2. THE MANAGER, ORIENTAL INSURANCE CO.LTD., MADRAS.

(R1 AND R2 EXPIRED. THEIR LRS ARE NOT NECESSARY PARTIES, R4 AND R5 ARE ALSO NOT NECESSARY PARTIES. HENCE THEY ARE NOT ARRAYED AS RESPONDENTS IN THIS APPEAL.)

BY ADV. SRI.P.V.JYOTHI PRASAD - R2
SRI.A.A.MOHAMMED NAZIR - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1507 OF 2001

Dated 6th July, 2007

JUDGMENT

Koshy,J.

A young man aged 31 died in a motor accident and his legal heirs, i.e., widow, two minor children, father and mother filed the claim petition claiming Rs.5,00,000/= as compensation. The Tribunal has awarded only an amount of Rs.2,83,000/= as total compensation with interest after finding that the accident occurred due to the negligence of the driver of the vehicle insured by the first respondent insurance company (third respondent in the O.P.(M.V)). The quantum of compensation is disputed in this appeal. According to the claimants, deceased was aged 31 at the time of accident. He was the sole bread winner of the family looking after his wife, children and old parents. He was a salesman in a meat stall. He used to purchase animals, slaughter the same and sell meat in the meat stall of PW4. PW4 issued Ext.A12 certificate stating that his monthly salary was Rs.3,000/=. He also deposed before the court that deceased was employed by him for purchasing animals, slaughtering and selling meat and the accident occurred when he sent the deceased to Tamil Nadu for purchasing animals for slaughtering purpose. The Tribunal has taken Rs.2,000/= as monthly income as book of accounts was not produced. Considering the fact

that appellant was employed in a meat stall and doing all sorts of manual work including butcher's work, we take Rs.2,400/= as monthly income and Rs.1,600/= as loss of dependency after deducting one third for personal expenses. A three member bench of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act should be taken as the guideline. Considering the entire circumstances, we take 16 as the multiplier and compensation payable will be Rs.3,07,200/= (Rs.1,600 x 12 x 16). The Tribunal has awarded Rs.2,40,000/= towards loss of dependency. So, balance compensation payable under that head will be Rs.67,200/=. Even though it was argued that compensation granted under other heads are very meagre, considering the total compensation granted, we are not enhancing the same. The additional compensation of Rs.67,200/= should be deposited by the first respondent insurance company with 7% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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